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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERTO AVILA,

Defendant and Appellant.

B229013

(Los Angeles County
Super. Ct. No. VA111774)

APPEAL from a judgment of the Superior Court of Los Angeles County. Roger Ito, Judge. Affirmed.

Richard D. Miggins, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, and Victoria B. Wilson and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Roberto Avila appeals his conviction for three counts of sexual intercourse or sodomy with a child 10 years of age or younger (Pen. Code,¹ § 288.7, subd. (a)). In his appeal, Avila argues that the trial court erred in denying his motion for a new trial based on alleged juror misconduct, and in denying his post-verdict petition for the disclosure of each juror's personal identification information. Because the trial court properly concluded that no prejudicial juror misconduct occurred, we affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. The Charges

The Los Angeles County District Attorney charged Avila with five counts of sexual intercourse or sodomy with his then eight-year-old son, R., in violation section 288.7, subdivision (a). It was also alleged that Avila committed the charged offenses by the use of force, violence, duress, menace, or fear of immediate or unlawful bodily injury in violation of section 1203.066, subdivision (a)(1). Avila pleaded not guilty to all charges and denied the special allegations.

II. Prosecution Evidence

Avila is R.'s father. Between March and June 2007, R. was eight years old and resided in a studio apartment with his father, mother, and three siblings. During that time, R. generally arrived home from school shortly after 1:00 p.m. R.'s two sisters did not get out of school until later in the afternoon, and his one-year-old brother stayed at the home of a neighbor during the day. When R. arrived home from school, his father was usually there while his mother was at work.

One day in March 2007, Robert arrived home from school and saw Avila watching a movie on television. The movie depicted a man and woman "mating." Avila told R. to watch the movie, but R. refused. On another day in March 2007, R. arrived home from school and saw Avila masturbating.

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Unless otherwise stated, all further statutory references are to the Penal Code.

On three other occasions between March and June 2007, Avila committed an act of sodomy against R. On each of those occasions, shortly after R. arrived home from school, Avila prepared a white tasteless liquid in a plastic cup that he gave R. to drink. About a half-hour after drinking the liquid, R. “started seeing everything blurry” and “having a little headache.” He went to his bed and fell asleep; he was fully clothed at the time. When R. woke up, he was lying on his side and no longer wearing his pants. Avila was naked and directly behind R. on the bed, and Avila’s penis was right next to R.’s buttocks. R. felt a “sharp pain” and “pressure” in his anus as he woke up. When R. walked to the bathroom, he saw that he was bleeding from his rectum.²

R. did not tell anyone about Avila’s sexual abuse because Avila threatened to hit R. with a belt if he did. According to R., Avila told him, “If you say something, I’m going to hit you. I’m going to hit you so hard that you won’t be able to walk.” After the third act of sodomy, R. tried to avoid Avila by hiding outside the house until his mother arrived home from work. There were three other times when Avila tried to get R. to drink the white liquid, but R. refused and went outside.

In 2007, R.’s parents separated, and he and his siblings moved with their mother to their maternal grandparents’ home. One day, in 2009, R.’s mother told him to clean his room. R. became upset because he thought he had already done so. He told his mother that he was tired of people making him do things that he did not want to do. When his mother asked R. what he meant by that statement, R. told her that Avila had made him watch a pornographic movie, but he did not disclose any other misconduct at that time. About a month later, in June 2009, R.’s mother found him crying in the closet and asked him what was wrong. R. then told his mother about Avila’s acts of sodomy.

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At trial, R. initially testified that this sequence of events occurred on five separate occasions. R. later clarified that the first two incidents consisted of Avila showing him a pornographic movie and masturbating in his presence, and the next three incidents consisted of the acts of sodomy.

In early June 2009, San Bernardino Sheriff's Deputy Laurel Mitchell and her partner met with R. on two occasions about his sexual abuse allegations. R. was reluctant to speak with the deputies, but relayed that he had been sodomized by Avila eight to 10 times. In describing the sodomy, R. stated that, after drinking a bubbly white liquid, he would fall asleep fully clothed and would wake up without his pants. He also reported that he would have bleeding and pain in his rectum when he woke up. R. was calm and unemotional during the interviews. After meeting with R., Deputy Mitchell had the case transferred to the Special Victims Bureau of the Los Angeles Sheriff's Department.

Los Angeles Sheriff's Detective, Marlene Vega, a member of the Special Victims Bureau, interviewed Avila for approximately two hours about R.'s sexual abuse allegations. During the interview, Avila repeatedly denied the allegations, but also made certain admissions. Avila admitted that he masturbated while watching pornographic movies, and that it "could have happened" that he masturbated while R. was asleep in the same room. Avila also admitted that he drank alcohol "all the time" when he was at home and that he had used methamphetamine. When Detective Vega suggested that Avila may have sodomized R. while he was under the influence of methamphetamine, Avila stated that "if something like that did come to happen, it was because of the [e]ffect of the drug," but "I don't remember." In response to Detective Vega's question about what specifically happened with R., Avila replied, "I did things that shouldn't be done," and "if I did it[,] it was at a time in which I was sick in my head at the moment." When Detective Vega asked Avila if he felt bad about what happened, he answered, "I feel bad, yes. Why? Because it could have been." Avila also said, "If it happened, I feel bad because it should not, and that should not have to happen." Detective Vega asked Avila what she should tell his son. Avila responded, "Well, if he is certain that I did that to him, to forgive me. That I love him very much. If he is really sure that I did it." During the interview, Avila repeatedly denied any memory of the alleged sodomy, telling Detective Vega, "I'm certain 100 percent that I don't remember. . . . It would be to tell a lie to tell you that I do remember when I don't." However, at other points in the

interview, Avila agreed with the detective that the sodomy “probably” happened because “[R.] is saying it. If he is saying it[,] it’s for something.”

Los Angeles Sheriff’s Detective Alfonso Lopez, a member of the Special Victims Bureau, testified as an expert on child sexual abuse. He explained that, in his experience, not all child victims of sexual abuse react the same way emotionally and some victims do not cry in interviews. Additionally, like adults, children may not be entirely consistent in their descriptions of past events and may provide slightly different versions of events in multiple interviews. Detective Lopez also stated that it was common for a child to delay disclosure of sexual abuse, particularly when there is a threat of physical harm from the abuser. It would not be unusual for a child to continue delaying disclosure even when the threat of harm is no longer imminent. Detective Lopez further testified that, in his experience, where the alleged abuse occurred two years prior to the report, Detective Lopez would not request a medical examination for the child because there would be no likelihood of recovering any physical evidence.

III. Defense Evidence

R.’s mother, S.A., was married to Avila for 14 years and had three children with him. In 2007, when they were still married, S. typically worked during the day while Avila stayed at home and watched the older children. S. later separated from Avila and relocated with the children to her parents’ residence.

S. testified that R. “sometimes” lies, but “never in big things like this.” She stated that she believed R.’s allegations about his father because when he told her about the sexual abuse, he had tears in his eyes. However, she also testified that she had “doubts” about Avila’s case because of R.’s accusations in her own case. At the time of trial, S. was serving a prison term for threatening R. with a barbecue knife. According to S., she grabbed the barbecue knife during an argument with R. because he was not listening to her, but R. “misinterpreted” her actions and “exaggerated” when he accused her of trying to kill him. S. denied that she tried to kill R., but admitted that she mistreated him and pleaded guilty to the charges to accept responsibility for her actions.

S. testified that, one day in 2009, she told R. to clean his room, but he refused to comply. R. accused his mother of being just like his father in making him do things that he did not want to do. When S. asked R. what he meant by that statement, he disclosed that Avila had forced him to watch a pornographic movie, but denied that any other abuse had occurred. About a month or two later, R. told his mother that Avila also had masturbated in his presence. On a subsequent occasion, in June 2009, S. was looking for R. because he had not cleaned his room, and found him crying in the closet. At that point, R. told his mother about Avila's acts of sodomy and said that it had happened about eight times. When S. asked R. why he had not told her before, he answered that he was afraid of his father. R. also said that his father had warned him that both parents would go to jail if he told anyone and he would be all alone. According to S., after R. disclosed the sexual abuse, he "changed completely" and became angry, forceful, and difficult to control.

Los Angeles Sheriff's Detective Doreen Evans, a member of the Special Victims Bureau, testified that she interviewed R. about his sexual abuse allegations on June 29, 2009. During the interview, R. relayed to Detective Evans that Avila sodomized him five times. When Detective Evans asked R. about his prior statement that the sodomy occurred eight to 10 times, he explained that Avila had attempted to assault him three other times, but R. was able to avoid him by going outside. In describing one of the incidents, R. told Detective Evans that, when he woke up, Avila was standing behind him and pulled up his pants when he saw that R. was awake. R. also recounted that, when he first woke up, he felt something inside his anus but he was not sure what it was. R. did not tell Detective Evans that Avila was completely naked during that incident, but he did describe another incident when he saw Avila fully naked with an erect penis. In addition, R. told Detective Evans that, when he woke up after drinking the white liquid, he experienced pain and bleeding from his rectum.

Craig Peterson, a licensed private investigator, interviewed R. on February 15, 2010. When Peterson asked R. how many times the sexual acts with Avila occurred, R. answered "three or five times." In describing the incidents, R. told Peterson that he was

fully clothed when he fell asleep, and that both he and Avila were completely naked when he woke up. R. also indicated that he was unsure whether Avila's penis was inside his anus. However, Robert recounted that, when he woke up, he felt something inside his anus and that Avila was lying behind him about an inch from his back. During the interview, R. repeatedly stated that he was telling the truth and that he would not lie about something so serious.

IV. Verdict and Sentencing

At the conclusion of the trial, the jury found Avila guilty of three counts of sexual intercourse or sodomy with a child under the age of 10, and not guilty of two. Following the verdict, the trial court sentenced Avila to three consecutive terms of 25 years to life for an aggregate prison sentence of 75 years to life. Avila has filed a timely appeal.

DISCUSSION

I. Motion for a New Trial Based on Juror Misconduct

Avila first contends that the trial court committed reversible error when it denied his motion for a new trial based on alleged juror misconduct.³ The specific misconduct claimed by Avila consists of (1) two jurors bringing a Bible into deliberations and the jurors then discussing their religious views on homosexuality, and (2) two jurors failing to disclose during voir dire a bias against homosexuals based on their religious beliefs. We conclude that the trial court properly denied the new trial motion because there was no prejudicial juror misconduct in this case.

³ Avila's motion for a new trial was based on four alleged errors: (1) insufficiency of the evidence; (2) jury misconduct; (3) the jury's failure to apply the proper standards on the burden of proof; and (4) the trial court's failure to provide the jury with a read-back of requested testimony. On appeal, Avila challenges the trial court's denial of the new trial motion based on jury misconduct, but does not make any argument or cite to any evidence concerning the other errors alleged in his motion. Accordingly, Avila has forfeited those arguments on appeal. (*People v. Stanley* (1995) 10 Cal.4th 764, 793 [“[E]very [appellate] brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration. [Citations.]”].)

A. Relevant Proceedings

During voir dire, the trial court asked the prospective jurors to disclose their city of residence, their marital status, their highest level of education, their occupation and the occupation of any spouse or domestic partner, the ages and occupations of any children, any prior jury service, and any reading materials that they brought with them to court that day. The trial court also asked the prospective jurors to provide information about any personal contacts and experiences with law enforcement, any prior experience as a victim of or witness to a crime, and any prior criminal charges or arrests. Of the 12 individuals who were ultimately selected to serve on the jury, four jurors (Juror Nos. 11, 14, 17, and 52) indicated that they had brought a religious book with them. Juror No. 11 brought a book on Buddhism, Juror No. 14 brought a Christian devotional book, and Juror Nos. 17 and 52 each brought a Bible. The trial court asked each of these prospective jurors whether there was anything about the juror's religious beliefs that would make it difficult or impossible for him or her to serve as a juror in this case. Each of the jurors answered, "No." During voir dire, neither the trial court nor the parties' counsel asked any prospective juror about his or her religious views on homosexuality.

Jury deliberations commenced on Tuesday, March 9, 2010, at 1:30 p.m. The following day, at 11:30 a.m., the jury reached its verdicts. At defense counsel's request, the trial court polled the jurors, each of whom confirmed that the verdicts as read were the juror's individual verdict in the case.

On March 15, 2010, the defense filed a post-verdict petition for the disclosure of the jurors' addresses and telephone numbers so that counsel could prepare a motion for a new trial based on juror misconduct. The petition was supported by a declaration from defense counsel which stated that, immediately after the verdict, he stepped outside the courtroom to see if any of the jurors would speak with him about the case and only Juror No. 21 agreed. Juror No. 21 told defense counsel that he was the main reason why the deliberations took as long as they did because he did not believe the victim's testimony or that Avila's statements to the police were admissions of guilt. Juror No. 21 also indicated that the other jurors became angry and aggressive with him and pressured him to change

his position because they wanted to get back to their lives and work. Defense counsel asked Juror No. 21 if he had an abiding conviction that Avila committed the offenses, and Juror No. 21 answered that he did. Defense counsel gave Juror No. 21 his business card so that the juror could contact him if he wished to discuss the case further.

According to the declaration, defense counsel later received a lengthy e-mail from Juror No. 21 about the case. In the e-mail, Juror No. 21 discussed the evidence presented by the prosecution and explained why he initially did not find it persuasive. He stated that he changed his mind and felt that Avila “may be . . . guilty” after another juror “calmly took out the rules given by the judge and explained them with details, that the evidence needed to be considered and nothing else, to take my personal feelings from the picture and concentrate on the evidence at hand again.” Defense counsel thereafter had a telephone conversation with Juror No. 21 during which the juror further described the deliberations. Juror No. 21 indicated that three jurors brought a Bible into the deliberations and there was discussion among the jury about whether Avila was a homosexual, whether homosexuality was a lifestyle choice, and whether homosexuality was a sin.

On March 26, 2010, the trial court held a hearing on the petition. The court ruled that Avila had made a prima facie showing of good cause for the disclosure of Juror No. 21’s personal identification information, which defense counsel confirmed he already had, but had failed to make such a showing as to the remaining 11 jurors. The court noted that Juror No. 21 was equivocal in his e-mail to defense counsel, and based on the juror’s description of the deliberations, Avila had not presented sufficient evidence of juror misconduct to support the disclosure of any other juror’s personal identification information. The court also indicated that it was denying Avila’s petition as to the 11 other jurors without prejudice and invited defense counsel to submit a declaration from Juror No. 21 for the purposes of renewing his request for the disclosure of the other jurors’ information and for filing a new trial motion.

On July 2, 2010, the defense filed a motion for a new trial based, in part, on juror misconduct. The motion specifically asserted that there was misconduct during

deliberations when one of the jurors read aloud from the Bible about homosexuality being a sin and stated his belief that Avila was a homosexual. The motion was supported by a declaration from Juror No. 21. According to the declaration, on the first day of deliberations, some of the jurors began discussing Avila's sexual orientation, and Juror No. 17, in particular, stated that he was convinced that Avila was a homosexual and that his homosexuality should have been a central issue at trial. On the second day of deliberations, Juror No. 17 brought a Bible into the jury room, read aloud a verse which stated that homosexuality was a sin, and declared that no further discussion was necessary because Avila was homosexual and therefore guilty. Juror No. 17 also told the other jurors that he believed homosexuality was a choice and that homosexuals were "crazy people." Juror No. 14 stated that she agreed with Juror No. 17 that homosexuality was a sin and that Avila was guilty.

On July 8, 2010, the trial court held a hearing on the motion for a new trial. The trial court declined to rule on the motion at that time, but found that further investigation into possible juror misconduct was necessary based on the declaration provided by Juror No. 21. The prosecution noted that there were significant discrepancies between Juror No. 21's supporting declaration and his earlier e-mail to defense counsel, and proposed that he be examined about the alleged misconduct before any of the other jurors were contacted. The trial court agreed that Juror No. 21 should be called to testify first before it decided whether to order the appearance of any other jurors or the disclosure of their personal identification information.

On August 6, 2010, the trial court held an in-chambers hearing with Juror No. 21. At the outset of the hearing, the trial court stated that the purpose was to determine whether the other jurors' personal identification information should be disclosed and whether additional inquiry of any other jurors was appropriate. The trial court and both counsel then questioned Juror No. 21 under oath.

Juror No. 21 testified that, on the second day of deliberations, an elderly male juror brought a Bible into the jury room.⁴ A younger male juror also “brought his Bible throughout the trial, but he never really made any comments.” When Juror No. 21 and two other jurors indicated that they were not certain whether Avila was guilty, the elderly male juror who had brought the Bible became frustrated and stated something to the effect of, “You know, for him to be doing this to his son, being that the son is a male and he’s a male, he’s homosexual.” The juror then opened the Bible and “pointed at something there for himself,” but he “did not quote anything” from the Bible. Instead, the juror walked around the room and said something to the effect of, “You know, God had asked man to repent of their sins, and this is a sin, therefore, he has a choice.”

One of the jurors who was uncertain about Avila’s guilt expressed that she had a homosexual brother who would harm himself because he felt that everyone was against him due to his sexual orientation. In response, the elderly male juror remarked, “you see? Homosexuals are all nuts, and they need to repent, otherwise they’re going to hell.” The juror made this statement while staring at another older male juror who was seated at the far end of the table. An older female juror then commented that she was “a church-going lady, that she had read that in the Bible, and she believed the same thing.”

In response to these references to homosexuality and the Bible, other jurors noted that “there’s nothing here that is saying anything about homosexuality.” The jury foreperson and the young male juror who had brought a Bible then stated, “Let’s concentrate [on] what the judge -- as to the rules and what we need to follow because that’s the key to this.” At that point, the jurors “read the rules again.” The discussion about homosexuality and the Bible occurred during the “mid part” of deliberations. The jury reached its verdicts after the foreperson told them to “forget about what you guys think” about biblical passages and to instead focus on and follow the instructions given by the judge. Juror No. 21 also confirmed that, immediately after the verdicts were

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At the evidentiary hearing, Juror No. 21 could not recall the assigned juror number of any of the jurors except his own.

rendered, he had an abiding conviction of the truth of the charges for which the jury found Avila guilty.

Following Juror No. 21's testimony, the trial court commented on the record that it found Juror No. 21 to be "very credible." Based on the juror's testimony about the deliberations, the court tentatively ruled that there was insufficient evidence to warrant the disclosure of any other juror's identification information. The court indicated that it would set another hearing for a final ruling on the petition for the disclosure of the jurors' information and the motion for a new trial.

On October 5, 2010, the trial court held a final hearing on the matter. The court first adopted its tentative ruling that there was no good cause for further disclosure of the jurors' personal identification information based on the evidence presented at the earlier hearing. Addressing the new trial motion, the court then stated as follows: "... I don't think you have enough evidence here to suggest that there is a motion for new trial that should be granted based upon what I heard, the totality of the circumstance[s] surrounding the jurors' verdicts, [Juror No. 21's] rendering of a verdict, the fact the jury rendered mixed verdicts, the fact that although he indicated that a Bible had been brought into the jury room that ultimately the foreman shepherd[ed] them into using the law on the case -- I should say, the facts on the law, so based on all those factors, I do not believe that there is sufficient evidence to suggest that a new-trial motion is appropriate and that this court should overturn the jurors' verdicts." On that basis, the trial court denied the motion for a new trial.

B. Standard Of Review

"When a defendant moves for a new trial based on jury misconduct, the trial court undertakes a three-part inquiry. 'First, the court must determine whether the evidence presented for its consideration is admissible. . . . [¶] Once the court finds the evidence is admissible, it must then consider whether the facts establish misconduct. . . . [¶] Finally, if misconduct is found to have occurred, the court must determine whether the misconduct was prejudicial.' [Citation.]" (*People v. Sanchez* (1998) 62 Cal.App.4th 460, 475.) "Misconduct by a juror . . . usually raises a rebuttable "presumption" of prejudice.

[Citations.]’ [Citation.]” (*People v. Danks* (2004) 32 Cal.4th 269, 302.) “[T]his presumption of prejudice “may be rebutted by an affirmative evidentiary showing that prejudice does not exist or by a reviewing court’s examination of the entire record to determine whether there is a reasonable probability of actual harm to the complaining party [resulting from the misconduct]. . . .” [Citations.]’ [Citations.]” (*People v. Carter* (2005) 36 Cal.4th 1114, 1208.)

In determining whether misconduct occurred, “[w]e accept the trial court’s credibility determinations and findings on questions of historical fact if supported by substantial evidence. [Citations.] Whether prejudice arose from juror misconduct, however, is a mixed question of law and fact subject to an appellate court’s independent determination. [Citations.]” (*People v. Nesler* (1997) 16 Cal.4th 561, 582.) As the California Supreme Court repeatedly has cautioned, “before a unanimous verdict is set aside, the likelihood of bias . . . must be *substantial*. . . . [T]he criminal justice system must not be rendered impotent in quest of an ever-elusive perfection. The jury system is fundamentally human, which is both a strength and a weakness. [Citation.] Jurors are not automatons. They are imbued with human frailties as well as virtues. If the system is to function at all, we must tolerate a certain amount of imperfection short of actual bias. To demand theoretical perfection from every juror during the course of a trial is unrealistic.’ [Citation.]” (*People v. Danks, supra*, 32 Cal.4th at p. 304.)

C. References to Religious Beliefs on Homosexuality During Deliberations

Avila asserts that the jury committed prejudicial misconduct during deliberations when two jurors brought a Bible into the jury room which was referenced in discussing Avila’s guilt, and when two jurors made comments about homosexuality being a sin in the Bible. We conclude that the jurors’ references to the Bible and their religious beliefs on homosexuality constituted misconduct, but that such misconduct was not prejudicial.

“It is misconduct for a juror to consider material [citation] extraneous to the record. . . .’ [Citation.]” (*People v. Williams* (2006) 40 Cal.4th 287, 333.) “[W]hen misconduct involves the receipt of information from extraneous sources, the effect of such receipt is judged by a review of the entire record, and may be found to be

nonprejudicial. The verdict will be set aside only if there appears a substantial likelihood of juror bias. Such bias can appear in two different ways.’ [Citation.] [¶] ‘First, we will find bias if the extraneous material, judged objectively, is inherently and substantially likely to have influenced the juror.’ [Citation.] ‘Under this standard, a finding of “inherently” likely bias is required when, but only when, the extraneous information was so prejudicial in context that its erroneous introduction in the trial itself would have warranted reversal of the judgment. . . .’ [Citation.] [¶] Second, ‘even if the extraneous information was not so prejudicial, in and of itself, as to cause “inherent” bias under the first test,’ the nature of the misconduct and the ‘totality of the circumstances surrounding the misconduct must still be examined to determine objectively whether a substantial likelihood of actual bias nonetheless arose.’ [Citation.] ‘The presumption of prejudice may be rebutted . . . by a reviewing court’s determination, *upon examining the entire record*, that there is no substantial likelihood that the complaining party suffered actual”” bias. [Citation.]’ (*People v. Danks, supra*, 32 Cal.4th at p. 303.)

In this case, the testimony at the evidentiary hearing on the motion for a new trial established that two jurors made comments about an extraneous matter when they referenced the Bible and their religious beliefs on homosexuality during deliberations.⁵ Specifically, an elderly male juror who had brought a Bible into the jury room pointed to an unidentified biblical passage and made statements to the effect that Avila was a homosexual, that homosexuality was a sin, and that homosexuals had to repent for their

⁵ Contrary to Avila’s characterization, the record on appeal does not reflect that “two jurors brought a Bible into the deliberations, and both referenced the Bible during those deliberations.” Rather, as testified by Juror No. 21, of the two jurors who brought a Bible into the jury room, only one of them (the elderly male juror) ever referenced the Bible during deliberations. The other juror with a Bible (the young male juror) never read aloud from the Bible, circulated any passages from the Bible, or made any reference to the Bible in the jury room. In fact, when other jurors began commenting on whether homosexuality was a sin in the Bible, the young male juror with the Bible, along with the jury foreperson, told the jurors to “concentrate [on] . . . the rules and what we need to follow because that’s the key to this.”

sin or else they would go to hell. An elderly female juror then expressed that she shared a similar view based on her reading of the Bible. These two jurors' remarks about the Bible and their religious beliefs that homosexuality was a sin were clearly extraneous and non-evidentiary, and as such, they constituted misconduct. (*People v. Williams, supra*, 40 Cal.4th at 333 ["reading aloud from the Bible or circulating biblical passages during deliberations is misconduct"]; *People v. Danks, supra*, 32 Cal.4th at p. 308 [juror's "conduct in bringing a copy of [a biblical] passage into the jury room, and passing it around to the other jurors . . . was misconduct"].)

However, the evidence presented at the hearing also established that the jurors' misconduct in commenting on the Bible and homosexuality during deliberations was not prejudicial. According to the testimony of Juror No. 21, which the trial court found to be "very credible," the discussion of homosexuality occurred during the "mid part" of the deliberations. In response to the two elderly jurors' remarks about homosexuality being a sin in the Bible, other members of the jury made statements to the effect that "there's nothing here that is saying anything about homosexuality." Two of the jurors, including the foreperson, specifically told the others that they had to "concentrate [on] . . . the rules and what we need to follow because that's the key to this." The jury then "read the rules again." As described by Juror No. 21, the jury reached their verdicts after the foreperson, who was "very serious and focused," admonished the jurors to "forget about what you guys think" about biblical passages and to follow the instructions given by the judge. (*People v. Williams, supra*, 40 Cal.4th at 335 [one juror's admonishment that religion should not be considered in arriving at a verdict "weigh[ed] against a finding of prejudice" in another juror's reading aloud from the Bible during deliberations]; *People v. Danks, supra*, 32 Cal.4th at p. 308 [one juror's comment that "God played no role in the penalty decision" supported the conclusion that another juror's circulation of a biblical passage during deliberations was not inherently prejudicial].) There is nothing in the record which reflects that, after the foreperson's admonishment, any of the jurors failed to follow the trial court's instructions in reaching their verdicts.

The final verdicts rendered by the jury further support a finding that there was no substantial likelihood of bias against Avila as a result of the jurors' discussion. The jury unanimously voted to acquit Avila of two of the five charged counts of sexual intercourse or sodomy with a child under the age of 10. Avila argues that the jury's not-guilty verdict on two of the five counts fails to rebut the presumption of prejudice because the victim's testimony only supported a finding of three incidents of sodomy. However, we agree with the Attorney General that this argument actually bolsters the conclusion that the jury based its verdicts on the evidence presented at trial rather than on any personal agreement with biblical passages concerning homosexuality as a sin.

Avila further asserts that the misconduct that occurred during deliberations was prejudicial because Juror No. 21 testified that he voted for the guilty verdicts based on pressure from the other jurors. However, Juror No. 21's testimony about the reasons for his verdict is inadmissible under Evidence Code section 1150, which precludes any consideration of the subjective reasoning processes of a juror.⁶ (See *People v. Steele* (2002) 27 Cal.4th 1230, 1261 [““[A] verdict may not be impeached by inquiry into the juror's mental or subjective reasoning processes””]; *People v. Hedgecock* (1990) 51 Cal.3d 395, 419 [“[W]hen a juror in the course of deliberations gives the reasons for his or her vote, the words are simply a verbal reflection of the juror's mental processes. Consideration of such a statement as evidence of those processes is barred by Evidence Code section 1150”].) Moreover, although Juror No. 21 testified that he felt pressured by the other jurors to end the deliberations, he confirmed that he only reached his verdict after the foreperson focused all the jurors on the evidence and the instructions. Juror No.

⁶ Evidence Code 1150, subdivision (a), provides that “[u]pon an inquiry as to the validity of a verdict, any otherwise admissible evidence may be received as to statements made, or conduct, conditions, or events occurring, either within or without the jury room, of such a character as is likely to have influenced the verdict improperly. No evidence is admissible to show the effect of such statement, conduct, condition, or event upon a juror either in influencing him to assent to or dissent from the verdict or concerning the mental processes by which it was determined.”

21 also admitted that he had an abiding conviction that Avila had committed the offenses for which he was found guilty.

Based on the record before us, we conclude that the jurors' comments about their religious beliefs on homosexuality were not inherently or substantially likely to have influenced the jury to convict Avila of a crime that they believed the prosecution failed to prove, nor was it substantially likely that any juror was actually biased against Avila in rendering the verdicts. The jury misconduct that occurred during deliberations was therefore not prejudicial.

D. Failure to Disclose Religious Bias Against Homosexuals in Voir Dire

Avila also argues that two jurors committed prejudicial misconduct during voir dire by concealing that they were biased against homosexuals based on their religious beliefs. We conclude that Avila forfeited this argument on appeal by failing to raise it in the trial court, and even if the argument was not forfeited, the jurors' failure to disclose their religious views on homosexuality during voir dire did not constitute misconduct.

First, Avila forfeited his claim that the jurors concealed a religious bias during voir dire because he never asserted this specific claim of juror misconduct in connection with his motion for a new trial. Rather, the sole claim of juror misconduct that Avila raised in his new trial motion was based on the conduct of the jurors during deliberations. There was no additional claim that any juror committed misconduct during voir dire by concealing material facts or providing false information. In *People v. Dykes*, the California Supreme Court rejected a similar attempt by an appellant to assert new claims of juror misconduct that were never raised in the trial court. (*People v. Dykes* (2009) 46 Cal.4th 731, 808.) As the Supreme Court reasoned, the "failure to raise the issue of juror misconduct and seek relief from the court on that basis results in a forfeiture of the issue on appeal. [Citations.] The circumstance that defendant raised some juror misconduct claims in his motion for new trial does not serve to preserve other bases for his claim on appeal. [Citation.]" (*Id.* at p. 808, fn. 22.) Avila accordingly forfeited his claim of juror concealment on appeal.

Second, even assuming that Avila's juror concealment claim was not forfeited, it fails on the merits. The failure of a juror to disclose information in voir dire does not constitute misconduct in every case. "Although intentional concealment of material information by a potential juror may constitute implied bias justifying his or her disqualification or removal [citations], mere inadvertent or unintentional failures to disclose are not accorded the same effect. "[T]he proper test to be applied to unintentional 'concealment' is whether the juror is sufficiently biased to constitute good cause for the court to find . . . that he is unable to perform his duty." [Citation.] [¶] Whether a failure to disclose is intentional or unintentional and whether a juror is biased in this regard are matters within the discretion of the trial court. Except where bias is clearly apparent from the record, the trial judge is in the best position to assess the state of mind of a juror or potential juror on voir dire examination. [Citations.]' [Citation.]" (*People v. San Nicolas* (2004) 34 Cal.4th 614, 644.) Indeed, "[t]he determination of a motion for a new trial rests so completely within the court's discretion that its action will not be disturbed unless a manifest and unmistakable abuse of discretion clearly appears." [Citation.]" (*People v. Carter, supra*, 36 Cal.4th at p. 1210.)

At the evidentiary hearing on Avila's motion for a new trial, Juror No. 21 was unable to recall the assigned juror numbers of the individuals who discussed their religious views on homosexuality during deliberations; he simply described them as an "older man" and an "older lady." In his supporting declaration, on the other hand, Juror No. 21 specifically identified the jurors who made references to their religious beliefs on homosexuality as Juror No. 17, a male juror, and Juror No. 14, a female juror. The record further reflects that, during voir dire, both Juror No. 17 and Juror No. 14 disclosed that they had brought a religious book with them. Juror No. 17 brought a Bible and Juror No. 14 brought a book on Christian devotional reading. In response, the trial court asked these jurors a general question as to whether their religious beliefs would make it difficult for them to serve as a juror in this case, and both jurors answered, "No."

Notably, however, neither the trial court nor the parties' counsel asked the jurors any additional questions about their religious beliefs to probe for a potential bias against

homosexuals. Rather, it appears from the record on voir dire that both the court and the parties regarded the charges against Avila not as a case about homosexual behavior, but as a case about child sexual abuse. Furthermore, based on the evidence presented at trial, the prosecution's theory of the alleged crimes was not that Avila was a homosexual, but that he was a pedophile who had sexually abused his eight-year-old child. Given that the parties' counsel did not consider it relevant to inquire into the prospective jurors' religious beliefs on homosexuality in voir dire, it would be unreasonable to conclude that the jurors themselves should have known that it was relevant to their views on the matter in responding to generalized questions about their ability to serve as a juror in this case.

Under these circumstances, any alleged failure of the jurors to disclose a religious bias against homosexuals did not constitute an intentional concealment of material facts. Avila thus has failed to demonstrate that any jury misconduct occurred during voir dire.

E. Adequacy of the Hearing on the Motion for a New Trial

Avila further claims that the evidentiary hearing that the trial court conducted on the motion for a new trial was inadequate because the court failed to order any juror other than Juror No. 21 to appear for questioning. We disagree.

“The trial court has discretion to determine whether to conduct an evidentiary hearing to resolve factual disputes raised by a claim of juror misconduct. [Citation.] ‘Defendant is not, however, entitled to an evidentiary hearing as a matter of right. Such a hearing should be held only when the court concludes an evidentiary hearing is “necessary to resolve material, disputed issues of fact.” [Citation.]’” (*People v. Dykes*, *supra*, 46 Cal.4th at p. 809.) “The trial court’s decision whether to conduct an evidentiary hearing on the issue of juror misconduct will be reversed only if the defendant can demonstrate an abuse of discretion. [Citations.]” (*Id.* at p. 810.)

Here, the trial court acted well within its discretion in declining to call any of the other jurors to testify at the evidentiary hearing because a more extensive hearing with the remaining 11 jurors was not necessary to resolve any disputed issues of material fact. At the evidentiary hearing that was held, both the trial court and counsel conducted a detailed examination of Juror No. 21 concerning the alleged juror misconduct that

occurred during deliberations. Following the testimony of Juror No. 21, the trial court stated on the record that it found him to be “very credible,” and the court accepted Juror No. 21’s testimony about the conduct of the other jurors in ruling on the new trial motion. As a result, there were no disputed factual issues to be resolved through further testimony from the remaining 11 jurors. Instead, the trial court reasonably could have concluded that it had a sufficient factual record about actions of the jury during deliberations to make an informed ruling as to whether any prejudicial juror misconduct had occurred. Avila’s claim that the evidentiary hearing was inadequate is without merit.

II. Petition for the Disclosure of the Jurors’ Personal Identification Information

In a related claim, Avila contends that the trial court committed reversible error when it denied his post-verdict petition for the disclosure of each juror’s personal identification information for the purpose of preparing a new trial motion. We conclude, however, that the trial court did not abuse its discretion in denying Avila’s petition.

Following a verdict, a defendant may “petition the court for access to personal juror identifying information within the court’s records necessary for the defendant to communicate with jurors for the purpose of developing a motion for new trial or any other lawful purpose.” (Code Civ. Proc., § 206, subd. (g).) “The petition shall be supported by a declaration that includes facts sufficient to establish good cause for the release of the juror’s personal identifying information. The court shall set the matter for hearing if the petition and supporting declaration establish a prima facie showing of good cause for the release” of the requested information. (Code Civ. Proc., § 237, subd. (b).)

To demonstrate good cause, the party seeking disclosure must “‘set[] forth a sufficient showing to support a reasonable belief that jury misconduct occurred, that diligent efforts were made to contact the jurors through other means, and that further investigation is necessary to provide the court with adequate information to rule on a motion for new trial. . . .’” (*People v. Carrasco* (2008) 163 Cal.App.4th 978, 990.) The alleged misconduct also must be “‘of such a character as is likely to have influenced the verdict improperly.’” (*People v. Jefflo* (1998) 63 Cal.App.4th 1314, 1322.) Good cause does not exist where the allegations of juror misconduct are speculative, conclusory,

vague, or unsupported. (*People v. Wilson* (1996) 43 Cal.App.4th 839, 852.) We review the trial court's denial of a petition for the disclosure of jurors' personal identification information for an abuse of discretion. (*People v. Jones* (1998) 17 Cal.4th 279, 317.)

Avila claims that the disclosure of each juror's identification information was necessary to confirm Juror No. 21's testimony that there was juror misconduct, and to determine "if any of the remaining jurors' verdicts were affected by what was done and said during deliberations." However, as discussed, the trial court credited Juror No. 21's testimony about the conduct of the other jurors during deliberations, and thus, there were no disputed factual issues that required further investigation before the court could adjudicate the motion for a new trial. Because the trial court had sufficient factual information from Juror No. 21's testimony to rule on the merits the motion, the court reasonably could have concluded that the disclosure of the remaining jurors' personal identification information was unwarranted. (*People v. Granish* (1996) 41 Cal.App.4th 1117, 1132 [trial court properly denied request for juror identification information where defendant was "granted access to the juror who was critical to his inquiry" and there was "no showing defendant was denied information which could have aided his motion for new trial"].) Moreover, to the extent that Avila sought such information to investigate how the other jurors' verdicts may have been affected by the misconduct, such evidence would be inadmissible under Evidence Code 1150, which bars consideration of the mental processes of the jurors in arriving at their verdicts. Finally, Avila failed to meet his burden of showing that the juror misconduct that occurred during deliberations was "of such a character as is likely to have influenced the verdict improperly." (*People v. Jefflo*, *supra*, 63 Cal.App.4th at p. 1322.) As set forth above, while the jurors' references to the Bible and their religious beliefs on homosexuality were misconduct, such misconduct was not prejudicial.

In sum, because the record reflects that no prejudicial juror misconduct occurred in this case, the trial court did not abuse its discretion in denying Avila's petition for the disclosure of the jurors' personal identification information, and in denying his motion for a new trial based on juror misconduct.

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.